IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 501 OF 2001.

Board of Trustees of the
Port of Mormugao, a body
corporate constituted under the
Major Port Trust Act, 1963
and having its office at Mormugao
Harbour, Goa-4-3 802. ... Applicants.

VERSUS

1. V.M. Salgaonkar & Brothers Ltd.,
   a company incprorated under the
   Companies Act, 1956 and having
   its Registered Office at
   Salgaonkar House, Francisco
   Luis Gomes Road, P.O.Box 14,
   Vasco-da-Gama, Goa.

2. E. Fernandes, Chief General
   Manager, V.M.Salgaonkar &
   Brother Ltd., Salgaonkar House,
   Francisco Luis Gomes Road,
   Vasco-da-Gama, Goa.

3. Salgaonkar Mining Industries Ltd.,
   a Company incorporated under the
   Companies Act, 1956 and having
   their registered office at
   Salgaonkar Chambers, Margao, Goa. ... Respondents.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the Applicants.

Mr. A.F. Diniz, Advocate for the Respondent No.1.

Mr. M.S. Sonak, Advocate for the Respondent No.3.

CORAM: A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE: 17TH DECEMBER, 2003.

ORAL ORDER: **(PER KHANWILKAR, J.)**

The respondent filed Writ Petition No.436/1994 for quashing the letters dated 13.6.19994, 23.6.19994,

13.7.1994, 17.8.1994, 11/10/1994 and Resolution dated 21.10.1994 respectively. The Writ Petition was disposed of by this Court vide Order dated 15th January, 1996. The Writ Petition was in relation to Transhipper vessel "M.V.S. Sanjeevani" owned by Respondent No.1 and driven by Respondent No.3 which was grounded at Mormugao Harbour on 11th July, 1993. It is not necessary to burden this decision with all the events. Suffice it to mention that the Applicants called upon the Respondent No.1 to remove the subject vessel within specified time, failing which the Applicants would undertake the procedure for wreck removal as per law. That action was challenged by the respondents before this Court. In the Writ Petition, the Respondent No.3 intervened and offered to give substituted undertaking on behalf of respondent No.3 to remove the vessel by April 30, 1997. Later on, the respondent No.3 filed application for extension of time to remove the vessel which was granted again on the basis of the undertaking so given. That request was renewed by filing application in 1998 which was also allowed. The final extension was granted to complete the work of removal of ship wreck without fail till end of 1999 and compliance report was required to be filed by 10th June, 1999. Instead the respondent No.3 filed an application for extension of time till 15th May, 2000. That application was

dismissed on 10th July, 2000. Inspite of solemn representation made from time to time, no progress regarding removal of wreck was made by respondent No.3. It is in that backdrop the present application has been filed by the applicants for the following reliefs:-

> "Applicants, therefore, pray that this Hon'ble Court be pleased to direct Respondent No.3 to remove the wreck within such time as may be fixed by this Hon'ble Court and/or pass such other appropriate orders as may be necessary in the facts of the case".

2. The application was heard on various dates and the Court was informed that the work was in progress. The matter was lastly fixed in July, 2003 when it was expected that the work would be completed and for which reason the matter was notified in November, 2003. Now an affidavit has been filed by Shri Anil V. Salgaonkar, Managing Director of Respondent No.3 dated 15th December, 2003 giving firm commitment that the work of removal of the wreck would be completed by 30th June, 2004. Besides giving that firm commitment, the respondents have offered to furnish Bank Guarantee upto Rs.25 lakhs for the performance of the work within the stipulated period. Indeed indulgence has been shown by this Court to the respondents on more than one occasion. It appears that there is no

sufficient, much less satisfactory explanation offered by the respondents for the failure to remove the wreckage within the extended period given in the past. In our view the respondents have taken casual attitude and have not completed the work within the specified period granted from time to time by this Court. However, by way of indulgence, in view of the affidavit filed before this Court by the Managing Director of Respondent No.3 which is in the nature of Undertaking given to us and also the oral submission made through the counsel on behalf of the respondents, we show one more indulgence as last opportunity to the respondents to complete the removal of the wreck by 30th June, 2004 as prayed. In other words we accept the Undertaking so given to us and make it clear that no further request for extension shall be entertained by this Court at the instance of the respondents. Besides, the respondent No.3 to furnish performance Bank Guarantee of Rs.25,00,000.00 as stated in the affidavit. That be furnished within four weeks from today. It is made clear that in the event respondent No.3 fails to complete the work of wreck removal before 30th June, 2004, the applicants shall take over the removal work and invoke the performance Guarantee given by respondent No.3 in terms of this Order and in the event the estimated cost of the balance work exceeds the amount of Rs.25,00,000.00, call upon the

respondent No.3 to forthwith deposit such amount. That demand be made on or before 15th July, 2004 and on such communication being received by the respondent No.3, Respondent No.3 shall deposit the amount so demanded within two weeks from the receipt of that communication.

3. In the circumstances this Application is disposed of on the following terms:-

(i) The assurance/undertaking given by the respondent No.3 on affidavit as well as during the oral submissions, through counsel, that the work of removal of wreck shall be completed by 30th June, 2004 is accepted.

(ii) The respondent No.3 is directed to complete the said work to the satisfaction of the Port Trust before 30th June, 2004.

(iii) Respondent No.3 to furnish performance Bank Guarantee for a sum of Rs.25,00,000.00 within four weeks from today which will be kept alive till the end of August, 2004 or till such time as may be directed by this Court from time to time. Port Trust shall invoke the Bank Guarantee in the first week of July, 2004, in the event it is satisfied that the respondent No. 3 has not completed the work of

removal of wreckage by 30th June, 2004 in terms of this order. If the Port Trust Applicants) are of the view that the estimated cost for undertaking the remaining salvage work would exceed sum of Rs.25,00,000.00 it shall call upon the respondent No.3 to deposit such amount on or before 15th July, 2004. The respondent No. 3 shall deposit such amount with the Applicants/Port Trust within two weeks from the receipt of such communication. Whereafter the applicants to complete the remaining work as expeditiously as possible.

4. The application is disposed of on the above terms with no order as to costs.

A.M. KHANWILKAR, J.

P.V. HARDAS, J.

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